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SHEPPARD MULLIN RICHTER & HAMPTON, LLP
JAMES M. CHADWICK Cal. Bar No. 157114
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4106
Tel: 415.434.9100
Fax: 415.434.3947
jchadwick@sheppardmullin.com

DLA PIPER RUDNICK GRAY CARY US LLP
DIANA NG FUNG Cal. Bar No. 185175
2000 University Avenue
East Palo Alto, CA 94303-2248
Tel: 650.833.2000
Fax: 650.833.2001
diana.ng.fung@dlapiper.com

Attorneys for Plaintiff
HORTA, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HORTA, LLC,

Plaintiff,

v.

CITY OF SAN JOSE,

Defendant.

CASE NO. C 02-04086 JF (RS)

[Related Case Nos. C 00-20018 JF
and C 05-03778 JF]

STIPULATION AND [PROPOSED] ORDER
REGARDING SUBMISSION OF MOTIONS AND
CONTINUING HEARING ON HORTA, LLC'S
MOTION TO RECONSIDER, REOPEN, AND
AMEND JUDGMENT

Judge: Hon. Jeremy Fogel
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action brought by Horta against the City of San Jose (the “*San Jose Action*”);

WHEREAS, on March 14, 2005, plaintiff Horta, LLC (“Horta”) filed its Motion to Reconsider, Reopen, and Amend Judgment (the “Motion to Amend”) and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery from the Federal Aviation Administration in the related case *Horta, LLC v. Federal Aviation Administration, et al.*, United States District Court, Northern District of California, Case No. C 05-03778 JF (the “*FAA Action*”);

WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the *FAA Action* to compel the FAA to provide complete responses to Horta’s discovery requests and to provide the requested deposition testimony;

WHEREAS, the Court took the FAA’s motion to quash and Horta’s motion for summary judgment under submission at the close of the December 16, 2005 combined hearing on the motions and has not yet ruled on them;

WHEREAS, the parties have previously stipulated to and the Court has ordered a number of continuances of the hearing date for Motion to Amend;

WHEREAS, there is currently a need to determine whether and in what form the FAA may issue a letter of deviation authority for operations of Horta’s Boeing 727 for the purposes of transporting the San Jose SaberCats;

WHEREAS, if the discussions between Horta and the FAA fail to resolve the issues presented by Horta’s motion for summary judgment and the FAA’s motion to quash, Horta contends that it requires additional time to complete discovery pertaining to the issues raised in the Motion to Amend, and to submit additional briefing on that motion;

1 WHEREAS, Horta and the City of San Jose (the "City") agree that:

2 (1) Horta and the defendants in the *FAA Action* should be granted until October 13,
3 2006 to file any additional briefing in the *FAA Action*, and that upon the filing of any additional
4 briefing, the matter will be deemed submitted and the Court will rule on the pending motions in
5 the *FAA Action*;

6 (2) Horta and the City should be granted until November 20, 2006 to submit any
7 additional briefing on Horta's motion to amend the judgment (to be limited to no more than
8 fifteen pages); and

9 (3) The October 6, 2006 hearing on the Motion to Amend in the *San Jose Action*
10 should be continued to December 1, 2006.

11 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action,
12 that:

13 (1) Horta and the City should be granted until November 20, 2006 to submit any
14 additional briefing on Horta's motion to amend the judgment (to be limited to no more than
15 fifteen pages); and

16 (2) the October 6, 2006 hearing on the Motion to Amend in the *San Jose Action*
17 should be continued to December 1, 2006.

18 Dated: September 18, 2006

SHEPPARD MULLIN RICHTER & HAMPTON LLP

19
20 By /s/

21 JAMES CHADWICK

22 Attorneys for Plaintiff HORTA, LLC

23 Dated: September 18 2006

RICHARD DOYLE, City Attorney

24
25 By Joseph P. Diciuccio

26 NORA FRIMAN

27 JOSEPH P. DICIUCCIO

28 Attorneys for Defendant CITY OF SAN JOSE

ORDER

Pursuant to stipulation, and good cause appearing therefor, IT IS SO ORDERED:

(1) Horta and the City are granted until November 20, 2006 to submit any additional briefing on Horta's motion to amend the judgment (to be limited to no more than fifteen pages); and

(2) the October 6, 2006 hearing on the Motion to Amend in this case is continued to December 1, 2006, at 9:00 a.m., in the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San Jose, California.

Dated: September 28, 2006



HON. JEREMY FOGEL
UNITED STATES DISTRICT COURT JUDGE